

MONTANA PUBLIC DEFENDER COMMISSION

Best Western GranTree Inn
Bozeman MT

August 29, 2011

MINUTES

Approved at the October 24, 2011 Meeting

Commissioners Present

Margaret Novak, Chester; Terry Jessee, Billings; Charles Petaja, Helena; Richard (Fritz) Gillespie, Helena; Kenneth Olson, Great Falls; Bill Snell, Billings

Commissioners Absent

Ray Kuntz, Red Lodge; Majel Russell, Billings; Caroline Fleming, Miles City

Staff Members Present

Randi Hood, Chief Public Defender; Joslyn Hunt, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Larry Murphy, Contracts Manager; Peter Ohman, Regional Deputy Public Defender (RDPD), Bozeman; Matt McKittrick, RDPD, Great Falls; Dave Stenerson, RDPD, Missoula; Harry Freebourn, Administrative Director; Kyle Belcher, IT Supervisor; Cathy Doyle, Administrative Assistant

Liaisons

Nick Aemisegger, liaison for union attorneys, and Lisa Korchinski, liaison for non-management appellate defender staff and attorneys, were in attendance. Laura Masica, liaison for union support staff and investigators, had nothing to report and did not attend.

Interested Persons

Timm Twardoski, Executive Director, American Federation of State, County and Municipal Employees (AFSCME); Nikki Zupanic, Public Policy Director, American Civil Liberties Union of Montana (ACLU); Greg DeWitt, Legislative Fiscal Division; Sherry Scurr, Legislative Services Division; Brent Doig, Office of Budget and Program Planning

1. Call to Order

The Montana Public Defender Commission meeting was called to order by Chairman Fritz Gillespie at 8:50 a.m.

2. Approval of Minutes (*Action Item)

Commissioner Olson moved to approve the minutes of the February 28, 2011 meeting as submitted. Commissioner Petaja seconded. The motion carried.

3. Election of Officers (*Action Item)

This item was deferred until later in the meeting.

4. Commission Liaisons

Lisa Korchinski, liaison for non-management appellate defender staff and attorneys, summarized her memo to the Commission. A suggestion has been made to provide more comprehensive training for trial attorneys that differentiates between sentence review, post-conviction relief and appealable issues. This could help prevent frivolous appeals. Also, the closing form could provide more detail related to the appeal process.

A second concern is the issue of the private bar "dumping" cases on OPD or the Appellate office after the client has exhausted all of their resources. The Commission is encouraged to bring attention to this issue to the legislature, Commission on Practice, State Bar and the Supreme Court.

Chairman Gillespie agreed that the closing form can be improved from the appeal side, and suggested adopting a standard for line attorneys related to post-conviction options. He does not know what to do with the "dumping" issue, however. Chief Appellate Defender Joslyn Hunt said that her office has taken in seven cases in the last two weeks where the Supreme Court has appointed the Office of the Appellate Defender (OAD) because the clients were out of resources following the trial. It sometimes happens even during the trial phase, and Chief Public Defender Randi Hood said that they are also seeing more instances where private counsel are asking OPD to pay for their experts.

Staff attorney liaison Nick Aemisegger presented a list of concerns generated from discussion with the staff attorneys, but noted that there isn't a sense that the Commission will address all of them. He emphasized that the list is not meant as an attack on the agency, but his role as liaison is to open communication and work together to improve the system.

Mr. Aemisegger asked the Commission to focus on a couple of issues. First, item 1) e. i., the "luck of the draw" in the quality of representation is not fair to clients. He believes that systemically there are a lot of new attorneys without core competencies; this is not limited to specific regions. There is at least a perception that meaningful training and mentoring are not being provided, despite the reduction in management caseloads. He suggested forming a committee to get a sense of what the scope of the problem is and work towards resolution. Commissioner Petaja said that there are standards and training requirements, and he thinks most attorneys are meeting them. There are also policies in place for training and mentoring and he knows that a significant effort has been made by the agency. He asked if there are incompetent attorneys or if it is a training issue? Mr. Aemisegger said the primary issues are training new attorneys and ensuring that longer term attorneys are being supervised appropriately to ensure a certain level of practice.

The second item that Mr. Aemisegger addressed was 2) a., regarding substitution of judges, specifically Chief Hood preventing Great Falls attorneys from recusing judges. Commissioner Olson said the problem in Great Falls was that substitutions were not being made for good lawyering reasons; instead it was personal and carte blanche and without the permission of the client, creating all kinds of problems for the courts. In response, Chief Hood instituted a procedure requiring attorneys to follow the law in disqualifying a judge by consulting with the client. Mr. Aemisegger said this issue is a good example of a perceived problem that has already been addressed. Commissioner Petaja clarified that there is no Central Office policy that prevents attorneys from substituting judges. Chief Hood assured him that is correct.

Mr. Aemisegger asked to highlight two additional items from his extensive list. Under item 3, Caseloads, attorneys want the 12.5 units to be a trigger and management sees it as a red flag. He said that there has been improvement in managing caseloads, but the agency must ensure that attorneys aren't overloaded. Finally, in regards to item 6, Support Staff, staff attorneys think that it would be a better use of resources to hire more support staff rather than more attorneys.

Chairman Gillespie said the liaison role is a two-way street, and asked Mr. Aemisegger to gather information and recommendations regarding treatment courts from the line staff who are working in them. During the last legislative session Chairman Gillespie wrote to Chief Justice McGrath and Judge Reynolds regarding their inclusion of public defenders on treatment court teams serving clients who may not be eligible for public defender services. He did not receive a response from either judge, and suggested that the issue may need

to go to the legislature since there is currently no uniformity in treatment courts statewide. Commissioner Jessee noted that treatment courts are costing the agency a substantial amount of money. Commissioner Petaja reminded the Commission that they voted on this issue previously and determined that clients must qualify for services, and the treatment court must be pre-conviction. Statutorily, OPD doesn't have the authority to represent people if they are not indigent or if they have already been convicted. Commissioner Snell has designed and implemented treatment courts for the tribes. He said that one goal of treatment courts is to lessen caseloads for everyone, but training is often lacking. Because each treatment court is different there are many issues which vary by court, but some are common to many, including appropriateness of disclosures, denial of due process and serving the client's best interests. Mr. Aemisegger will report back by the next meeting with suggestions regarding what can and should be done to deal with these ethical issues.

5. Collective Bargaining Update

Commissioner Petaja attended the attorney collective bargaining session in April. Agenda items included a cap on caseloads, cell phone allowance, parking allowance, comp time and pay. Since the Governor's budget had not been finalized, it was immaterial to discuss pay. The support staff bargaining session included issues of alternate work schedules and pay differentials for fleet managers.

With the pay freeze in effect, the increase in insurance premiums for 2012 would have resulted in a net 5% decrease in employee pay. Timm Twardoski, AFSCME Executive Director, was asked to elaborate. Mr. Twardoski said that if the unions prevail in their lawsuit against the legislature regarding the pay freeze, they won't have to settle for the 1% and 3% increases previously negotiated with the governor's office. In the meantime, the unions persuaded the Governor to absorb the entire 5% increase in health insurance premium costs from the State's reserves for one year. Depending on what happens with the reserves, there could be a huge increase in premiums for employees in 2013. A hearing on the lawsuit is scheduled for October 6-7. Detailed information will be available from Mr. Twardoski or Chairman Gillespie as the process continues.

Mr. Twardoski said that Robin Haux (AFSCME field representative) and Diane Stenerson (OPD office manager in Hamilton) traveled the state doing one-on-one interviews with support staff. He reports that morale is up, they are talking more and feel that their problems are being addressed. He appreciates the assistance of OPD management in facilitating the tour.

6. Public Defender Program Report

A. Chief Public Defender Report

Chief Hood updated her written report. Garry Bunke, RDPD in Region 11, Miles City, is retiring. His staff attorney, Sheila Newman, will replace him, and he will mentor her in the regional deputy position, then assist in mentoring a new hire to take the staff position. There have been staff attorney turnovers in Billings and Helena. All new hires are spending time with the new orientation video, and are assigned an attorney to do direct mentoring. The new hire shadows the mentor for the first week or two, then will be shadowed by the mentor for a similar time period. There is a brief checklist for the supervisor to complete for the personnel file to document the initial mentoring effort.

Chief Hood and Administrative Director Harry Freebourn discussed budget requests with each office last week and they now have a better idea of where the current stressors are in the system. Although caseloads have been fairly static statewide, they are fluctuating in various locations. In Great Falls DNs are skyrocketing, but there are fewer in Billings. There are big increases in felonies in Billings (possibly due to a new county attorney) and in Havre.

In terms of management, there are two areas of focus:

1. Maximizing support staff, both in terms of job satisfaction and productivity. Some offices are being asked to reorganize following a review of best practices. October 1 is the target date.
2. Addressing the continuing issue of DN costs, which are disproportionate in terms of cost per case. Developing a standard and a protocol regarding the role of the attorney in DN cases is being explored, because the agency is paying for non-attorney services and there is currently no way to control them.

The Legislative performance audit started on August 8, with site visits initially planned in Butte, Lewistown, and Billings. The auditors are specifically looking at the assignment of cases to contract attorneys and the indigency determination process. The pre-audits conducted by Central Office staff and the regional deputies were a good learning experience, especially in terms of allowing the regional people to see how other offices are run.

The clerks of court recently began charging OPD for things they never requested payment for before. Chief Hunt and Mr. Freebourn will meet with them tomorrow to try to reach resolution. Chairman Gillespie noted that these were county costs before the creation of OPD, and now they want the state to assume the charges. Mr. Freebourn said that some of these costs were missed when calculating expenses at the inception of the agency. One solution might be to go jointly to the legislature and ask them to fund these items.

The regional deputies will be in Helena for a meeting on September 9. The morning agenda will include the Professional Development Center talking about what it means to deal with unionized workers and progressive discipline. There will be additional management training in December presented by Julie Benson Rosston. She has already worked with several individual offices to help improve relationships and instruct management teams on handling various personnel issues.

Commissioner Jessee asked why the mental health costs are so high in Great Falls compared to Billings. Chief Hood replied that it has to do with how cases are handled, and the practice of law in various locations, not necessarily the number of cases. Some offices, particularly those that came from county systems, had a practice of obtaining a mental health evaluation in every case. The agency has moved away from that, while still trying to provide the attorney with what they need.

Commissioner Petaja asked about replacing OPD mental health consultant Dr. Laura Wendlandt with Dr. Michael Scolatti. Chief Hood explained that Dr. Scolatti is doing pre-approvals and some fitness to proceed evaluations on an interim basis while a Request for Proposals is being prepared to contract for this service on a longer term basis. The RFP will be distributed to all mental health professionals who have a current memorandum of understanding on file with OPD. Commissioner Jessee wondered if the request for a "psych eval" is actually sometimes a fitness to proceed request; is there a terminology problem? Chief Hood said that the role of the mental health consultant in the pre-approval process is to make that distinction and determine the real need. At the request of Commissioner Snell, a breakdown of how much has been spent on each type of evaluation will be provided to the Commission.

B. Legislative and Budget Update (Interim Activity)

Budget talks with the Office of Budget and Program Planning (OBPP) will begin in December, although treatment court issues may need to be discussed earlier. Despite Chairman Gillespie's amusing yet serious assertion that "we need some more money," Brent Doig said that OBPP will try to maintain the status quo in the next biennium. Chairman Gillespie said that he appreciates the rapport he has with OBPP and especially their efforts to preserve OPD's funding during the last session.

Greg DeWitt introduced himself as OPD's new Legislative Fiscal Analyst, succeeding Pat Gervais. The Legislative Finance Committee will undertake two issues of interest to OPD during the interim—SJ 26 (related to performance monitoring) and monitoring OPD's funding. They will work through the full committee, rather than in small groups as they have in the past. Chairman Gillespie encouraged Mr. DeWitt to let him know what kind of information OPD can provide to the legislators; he was reminded during the session of the importance of communication so that they can understand the agency's issues and problems, especially when allocating funds.

Sherry Scurr staffs the Law and Justice Interim Committee (LJIC). She distributed the committee's draft work plan and the draft agenda for the September 9 meeting. The only assigned study for the committee this interim is SJR 29, restorative justice, which is unlikely to require the entire interim. The committee was polled, and the draft work plan was based on their responses. It has not yet been adopted, but tentatively calls for review of SB 187 (revision of the public defender system) in June. In addition, the committee is also required to address drafting of new legislation and it would be appropriate to request the committee to make bill proposals at the June meeting. There will be other items of interest to the agency related to restorative justice, DUI, and other areas, and OPD will be asked to provide input and/or panel members for those discussions. Ms. Scurr informed the Commission that Valencia Lane has retired, and David Niss will do rule reviews for the agency.

Chairman Gillespie said that prosecutors and defenders have much to contribute to the discussion of involuntary commitments. Ms. Scurr agreed, saying that attorneys will be included on a future panel. There is an educational component involved with so many new committee members, especially regarding the complex issue of restorative justice. Chairman Gillespie asked Ms. Scurr to let him know if there is anything he can provide to the committee.

Mr. Freebourn asked if there would be a joint meeting between the LJIC and the Commission as in the previous three interims. Ms. Scurr said it is not yet in the plan, but can be discussed. Mr. Freebourn also noted that the Commission needs to approve decision packages by May, 2012, so they need to be thinking about their requests.

C. Financial and Operating Report

Chief Hood thanked the entire agency for helping finish the fiscal year in the black once again.

Mr. Freebourn provided a bar chart showing caseloads by attorney type in addition to the standard set of reports. There are also "bubble graphs" showing where cases are located by case type statewide; they are based on FY 10 data, but the FY 11 charts won't show too much growth in incoming cases.

Mr. Freebourn reviewed the Financial and Operating report. Page 1 is staffing trends as approved by the legislature. The additional FTE in FY 2013 represents commission staff. The agency also has a large temporary workforce including students and short term workers that aren't counted in the FTE total. The contract attorney numbers are a snapshot as of June 30.

The payroll increase in FY 11 shown on page 2 is due to the temporary workforce, payouts for those leaving, and funding the pay ladder. In FY 10, the agency tried to keep as many cases in house as possible to mitigate the projected shortfall. However that could not be sustained, so FY 11 costs will increase for contract attorneys. The rent/travel/communication costs held steady in FY 11, but will increase for FY 12. Although the offices and departments made more requests than available funds, Mr. Freebourn does not expect a shortfall once budget adjustments are made.

Mr. Freebourn noted that virtually all of the supplemental appropriation was used (page 3). The personal services contingency will not be available to OPD this year. Commissioner Jessee asked if the agency looks for funding through federal grants. Mr. Freebourn said that the agency has applied for and received some federal grants, and spent every cent of the records management grant. In addition, the agency received \$100,000 for the recent death penalty training. He and others are constantly looking for opportunities.

The number of new cases on page 4 are represented on the bubble graphs.

The net case report is due September 30. The detail on page 5 will be summarized for the report. In the past, net cases were reported by attorney, but those numbers didn't match the number of new cases coming in because there could be multiple attorneys assigned to a single case. The agency is now being asked to report just the number of net cases.

The average number of days open report is also due on September 30 (page 6). Chief Hood said that speedy trial is an issue at 250 days open for felonies, and misdemeanors should be no more than 180 days.

The assessment and collections report is on page 7; Mr. Freebourn distributed a more detailed report that will also be submitted on September 30. Assessments are increasing each year, but the question is, will people pay? And what is the cost of that collection? It currently costs \$35-40,000 annually for one FTE to administer the accounts receivable, and another FTE may be needed in this biennium to handle the increase. When fees are received, they go into a special revenue fund. The hope is that there will be enough special revenue to fund the accounts receivable function, records management and Commission staff.

The allowance for doubtful accounts is \$600,000 of the \$900,000 total receivable balance for FY 11. Commissioner Petaja asked how that would be collected. Chief Hood described the current procedure. The court orders payments of fees, the clerks of court collect the fees and they send the money to OPD. There is no system in place to pursue people who aren't paying, and furthermore there are no resources to try to get them to pay. Chairman Gillespie added that there is a section in the statute that provides for people to be held in contempt if they are deliberately not paying, but it is up to the court to decide if that is the case, and the recourse is to put the client in jail at the cost of \$48 per day. Neither the courts nor the prosecutors want to go there. Commissioner Petaja says it is in effect a lifetime lien, because it cannot be discharged in bankruptcy. There are other problems as with assessments as well. Only courts can assess fees, but not all are doing it. And, the people who owe the most are in prison for a long time, so the cost of administration becomes overwhelming when they send in monthly payments in the amount of 52 cents. Commissioner Novak asked how the agency can make an effort to collect, how to convince the legislature that they are trying, and what legislation will be proposed during the next session to fix this? Chairman Gillespie would like to form a team of Commission members and agency staff to work on the problem of doing a better job of determining eligibility and perhaps drafting legislation dealing with cost recovery to make it more realistic. For people who are within the 133% of poverty, it makes sense that the courts should not be making subjecting them to fee assessments. But OPD also represents people with some assets, or who are over the 133% threshold, and the Commission needs to be proactive in working with clients and the courts so that they pay a certain amount over a certain period of time within their ability. He will form the team later today, and they need to complete their work by June.

The appellate case counts are on page 8, and the ending balance is skyrocketing. Chief Hunt will report later on resource needs for her office.

The percentages have not yet been updated on the financial statement by region. Billings' cases will be adjusted to reflect the way that their municipal court charges, resulting in a 2-3% difference that will help show cases to expenditures more accurately. The Capital Defense costs on page 4 represent work for both for the Ronald Allen Smith and the Miller cases.

D. 2013 Biennium Appropriation Update

The budget items detail shows how the budget progressed through the session. Mr. Freebourn thinks the agency ended up with a budget that they can work with; it was much better than expected in a tight economy.

Chairman Gillespie thanked Chief Hood and Mr. Freebourn for the effort they put in during the session, as well as the Governor's office for their assistance. Mr. Freebourn thanked Chairman Gillespie for his huge investment of time, as well the entire legislative team including Commissioners Petaja and Jesse, Chief Hunt, Mr. Murphy, Mr. Ohman and others.

E. Contracts

Contract Manager Larry Murphy introduced Kristina Neal, the new Conflict Coordinator. They will work together closely.

Mr. Murphy continues to work on Standards Compliance and has completed 45% to date. It might take a year or more to finish because each interview takes an hour or more. Some people new to the system have asked the regional deputies to provide an experienced FTE or contractor for the new attorney to shadow. They do not bill while they are shadowing since they are learning. It is mandatory for the regional deputies to actually meet with new contractors to determine their competency level in various areas of practice.

Work on Proficiency Determinations is also continuing. Unfortunately, this has not been a high priority for some of the regional deputies, so Mr. Murphy has only completed about 40%. Most of those reviewed are meeting expectations, although a few need some mentoring. Chairman Gillespie asked if any contractors have decided not to take OPD cases because they don't want to deal with the procedure. Mr. Murphy said that there has been very little resistance. A proposed standard revision will be considered later in the meeting.

One contract attorney was unable to comply with the standards even after meeting with the regional deputy to address numerous client complaints. His cases were reassigned and he will not be assigned future cases. There are also other attorneys that need to be monitored due to client or judicial complaints, although sometimes the judicial complaints have to do with a judge's resentment about being made to work hard, and not about poor attorney performance.

F. Training Report

Chief Hood presented the training report. The recent Capital Defense training was attended by 21 attorneys from Montana and Idaho, including several contract attorneys. The instructors were top notch, and they commented that it was the best conference they had attended in terms of active engagement of the participants.

Upcoming trainings include the investigator training starting tomorrow in Butte, and the Annual Meeting at Grouse Mountain Lodge October 12-13. All commissioners are invited to participate in the annual meeting, which will include a separate Child Welfare Training track. There will be a "Grizzly CLE" in Missoula on November 4 in conjunction with the last home Griz game.

The agency was invited to nominate two participants for a fellowship program to develop best practices for public defenders. Both Doug Day (Regional Deputy Public Defender in Region 7, Lewistown) and Katie Green (staff attorney in Missoula) were accepted to the program, and will share what they learn with FTE and contract attorneys statewide.

*G. Final Status of American University Recommendations (*Action Item)*

This item was tabled until the next meeting. Mr. Freebourn is expanding on Commissioner Jessee's excellent summary prepared for the legislature that shows how each recommendation was handled. Mr. Freebourn will present a comprehensive paper showing each action taken on the recommendations with backup documentation for the Commission's review and approval. Many of the recommendations are ongoing goals and objectives and might be included in the strategic planning process.

7. Public Comment

There was no public comment at this time.

8. Appellate Defender Program Report

Chief Hunt offered kudos to her team while she was on maternity leave, and said she is glad to back. The upward trend in caseloads continues, but they should be able to handle the increase if she can replace her departing attorney. She would still love to have one more FTE.

Policies and standards are in draft form, and will be distributed to the Commission soon. Chairman Gillespie suggested holding a conference call meeting to vote on their adoption.

Chairman Gillespie asked if Chief Hunt had any sense of the reason for the increase in the Supreme Court appointments. Chief Hunt doesn't think the Court sees it as attorneys abandoning the clients; it is different at the appeal level since the clients expended all of their resources at trial and are really indigent now. Also, the Court doesn't want to deal with people appearing pro se. In addition, if the trial attorney lost the first case, the client doesn't necessarily want the same attorney at appeal.

There is a mini-trend of people who say that their attorneys did not advise them of their right to appeal, so now they are on a short time frame. Chief Hunt is developing a form to help in discussions with clients to prevent this from occurring in the future. Chairman Gillespie asked for continued discussion between OPD and OAD regarding advising clients about the appeal process at the end of trial to prevent someone from falling through the cracks. He asked that the two offices bring a proposal to the Commission to formally adopt as policy.

Commissioner Petaja congratulated the Appellate office on the huge victory in the Coster decision. Chief Hunt was very pleased and thanked Assistant Appellate Defender Eileen Larkin for her work.

9. Conflict Coordinator Report

Kristina Neal said that it was an honor to be hired as the first Conflict Coordinator and she is excited to begin. Her office is on the first floor of the Goodkind building in Helena, but she is isolated from the Appellate office, the Major Crime Unit and the Helena public defender office. She is already working on conflict referrals, complaints, pre-approvals, and claim review and the response has been very positive both from the contractors and the regional deputies. She is also working on policy revisions in relation to the new position.

10. Old Business/New Business (*Action Items)

Election of officers, deferred from earlier in the meeting, is the first item of business. Commissioner Jessee moved to retain the current officers (Commissioner Gillespie as Chair, Commissioner Olson as Vice-Chair), since they have been extremely effective. Commissioner Petaja seconded and the motion carried unanimously. Commissioner Olson thanked Chairman Gillespie for his close work with the Legislature and the Central Office; he has done a super job as the chair.

A. *Brief Bank Demonstration*

IT Supervisor Kyle Belcher and Regional Deputy Public Defender Peter Ohman (Region 8, Bozeman) demonstrated the OPD brief bank (www.montanaprobono.net/defender). The briefs have been contributed from OPD attorneys, the Appellate office, and a few from the private bar. Mr. Belcher presented the folder structure, the searching feature and how to upload a brief. A committee reviews and categorizes each brief before it is made public. Commissioner Petaja encouraged the agency to contact the Montana Association of Criminal Defense Lawyers; they have a brief bank that goes back 20 years. A video training conference on the OPD brief bank is scheduled for next month.

B. *Attorney Standards Verification via Internet (*Action Item)*

A team of OPD attorneys including Eric Olson, Joslyn Hunt, Melissa Edwards, Christina Larson, Doug Day and Peter Ohman have worked to develop a computer based training and verification process to ensure standards compliance. This is not a performance assessment tool, but more of an open book test to help people be knowledgeable about and in compliance with the standards. There are multiple sections, each consisting of 10-15 questions with links to various resources including statutes, standards and policies to provide instant feedback. The attorney will have the opportunity to check their answers and change them if necessary after researching the correct answer before submitting. The intent is to roll this out at the annual meeting in October, with all FTE being required to complete the verification by accessing a web site (<http://mtopd.crhsts.com/login/index.php>) from their desktops by December. Eventually contract attorneys will be included too. Commissioner Novak moved that Mr. Olson be given permission to implement the verification process. Commissioner Jessee seconded and the motion carried.

C. *Review of Strategic Plan and Beginning the New Planning Process*

The agency's strategic plan is five years old and needs to be overhauled, including updating the organizational structure to comply with the legislation passed during the last session. Mr. Freebourn outlined a proposed process which Chairman Gillespie will forward to the Commission. Chairman Gillespie hopes to include new Commission members in the process when they are appointed. He asked Commissioner Olson to lead a strategic planning team; Commissioners Snell and Jessee will join him. However, Commissioner Jessee has been offered the opportunity to provide training on mental health issues for the law enforcement academy, and it will impact the amount of time he will be able to devote to Commission work.

Chairman Gillespie asked Commissioners Novak and Petaja to work with him on eligibility and cost recovery. Their work needs to be complete by June.

Commissioner Snell and Mr. Aemisegger will work on treatment court issues. Chairman Gillespie would like to create a proposal for discussion with Chief McGrath that will create some structure and uniformity regarding the role of the public defender in treatment courts.

Chief Hood will form agency committees to provide assistance in these endeavors.

*D. Revise Operating Procedures (*Action Item)*

The proposed changes incorporate the Commission's new responsibilities to appoint the Chief Appellate Defender and the Conflict Coordinator. Commissioner Petaja moved to accept the changes. Commissioner Olson seconded and the motion carried.

*E. Policy 301, Management of the Appellate Defender Office (*Action Item)*

The proposed revision, drafted by Chief Hunt and Commissioner Gillespie, reflects the legislative change putting the Chief Appellate Defender under the direct supervision of the Commission. Commissioner Novak moved to adopt the changes. Commissioner Petaja seconded and the motion carried.

*F. Proposed Standards Revisions (*Action Item)*

Proficiency Determination for Contract Attorneys

The proposed changes address the Contract Manager's difficulty in doing annual proficiency determinations for approximately 200 contract attorneys by changing it to a biennial requirement. It also enables the Conflict Coordinator to do proficiency determinations and requires the contractor to provide a copy of their annual CLE affidavit instead of updating the experience survey. Chairman Gillespie thought there was an attempt to require an annual proficiency determination during the session, but it did not pass. Commissioner Petaja moved to adopt the changes. Commissioner Jessee seconded and the motion carried.

Delivery of Services

This item was not addressed.

G. Eligibility Determination/Response to New Indigency Questionnaire

Regional Deputy Public Defender Dave Stenerson (Region 2, Missoula) provided feedback from the field regarding the new indigency questionnaire (IQ). There were multiple suggestions for improving the form itself. However, Mr. Stenerson said that one of the biggest problems is that the client is not always providing the best information; they might be filling the IQ out in jail, they might be intoxicated, they are upset about their circumstances. Sometimes the attorney can sit down and assist, but not always. He also said that the availability of the IQ to prosecutors is about to become an issue, especially when there are plea agreements requiring the client to pay OPD fees. There are varying interpretations of how much the fee should be, but it is up to the court to decide, and the ability to pay has always been part of the statute.

An issue that needs to be addressed statutorily is the definition of who constitutes a household. The current definition includes all members of a household, but there are numerous scenarios where people living in one place are not liable for paying each other's legal fees. Chairman Gillespie will be looking for a new federal statute that defines poverty and a more appropriate household definition, including a definition of a "dependent" as opposed to all members of the household. He will consult with the federal defenders on how they qualify clients.

H. Set future Commission meeting dates

The next meeting will be October 24 in Great Falls.

11. Public Comment

Lisa Korchinski thanked the Commission, especially Chairman Gillespie, for everything they did during the session. It was much appreciated.

12. Adjourn

The meeting adjourned at 3:05 p.m.